PREME COURT U. S.

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In the

Supreme Court of the United States

OCTOBER TERM, 1968

No. 147

L. W. FERRELL AND JOE FERRELL, Next Friends of PHILIP FERRELL, et al.,

Petitioners,

v.

DALLAS INDEPENDENT SCHOOL DISTRICT, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article VII, Section 1, of the Constitution of the State of Texas provides as follows:

"A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people,

it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."

Article 2780, Vernon's Annotated Texas Civil Statutes, provides as follows:

> "Said trustees shall adopt such rules, regulations and by-laws as they may deem proper; and the public free schools of such independent district shall be under their control; and they shall have the exclusive power to manage and govern said schools, and all rights and titles to property for school purposes heretofore vested in the mayor, city councils, or school trustees by articles 3995, 4013 and 4032, Revised Statutes of 1895, or other statutes, general and special, except such cities as are exempted by this title, shall be vested in said board of trustees and their successors in office; and their claims shall apply to any action or suit which may arise to which said board is a party."

STATEMENT OF THE CASE

Minor male Petitioners seek admission to public high school without necessity of complying with reasonable and proper requirements of local school authorities concerning their personal appearance with respect to the length and style of their hair. To prevent distraction and disturbance in school and interference with the educational process and to provide for the maintenance of order and decorum in school the principal refused to admit Petitioners unless and until they did comply. Petitioners' application for preliminary injunction only was heard and denied by the District Court. The Court of Appeals affirmed.

Enrollment at the school was scheduled September 7, 1966. (S.F. 21)

To enroll, students were to report to their previously assigned homerooms on that day. (S.F. 56)

Petitioners were members of a musical group or combo known as "Sounds Unlimited", and the witness, Mr. Alexander, was the business manager or booking agent of Sounds Unlimited. (S.F. 201, 202)

On the evening of September 6, Mr. Alexander called Mr. Lanham, the school principal, at his home and advised the principal that he had $4,000.00 invested in Petitioners, and would invest $1,000.00 more, and challenged the principal that Petitioners would be enrolled regardless of what the principal thought. (S.F. 45, 47, 57)

Mr. Alexander also advised the principal that he was coming to the school in connection with Petitioners' enrollment, and was told by the principal that he (the principal) would talk only to the boys and their parents. (S.F. 59)

Mr. Alexander then stated that he would bring the radio and T. V. media to the school when the boys enrolled. (S.F. 59)

Rather than report to their homerooms for enrollment in the usual manner Petitioners accompanied by the mothers of two of them and Mr. Alexander sought to be enrolled by the principal. (S.F. 22)

A conference was held between the principal, the boys and the two mothers. Mr. Alexander was excluded from the meeting. (S.F. 24-26)

At this conference Stephen Webb and Phillip Ferrell were denied admission to the school. Paul Jarvis was not denied admission. Paul Jarvis was denied admission on the following Tuesday. (S.F. 38)

Petitioners were denied admission to the school because the length and style of their hair would cause commotion, trouble, distraction and a disturbance in the school. (S.F. 36)

At this conference Petitioners advised the principal that they would not cut their hair. (S.F. 34, 35)

Petitioners knew that the length and style of their hair would be objectionable to the school authorities; one of them, Paul Jarvis, had cut his hair so as to attend summer school the preceding summer, and two recognized that with their hair style and length they would have to sneak by the principal and assistant principal in the halls to avoid detection by the school authorities. (S.F. 38, 100, 74)

At this conference there was a discussion about the boys' rights, school discipline and the principal's position. (S.F. 26)

Mr. Alexander was present at the school on enrollment day on September 7, 1966, to protect his investment. (S.F. 228)

Mr. Alexander called newspapers, radio stations and television stations to be present at the school on September 7, 1966. (S.F. 266)

After the conference between the two mothers, the three boys and the principal, the boys left the school building and proceeded to the sidewalk on the west side of the school grounds where the three boys and Mr. Alexander held a press interview, and pictures, motion pictures and sound tapes were made. (S.F. 266, 267)

Mr. Alexander admits it is a part of a booking agent's employment to get all the publicity he can for his clients and that this is why he was present at the school on enrollment day, why he called the press, radio and television stations to come to the school on September 7, and why he has taken advantage of every opportunity to publicize this incident. (S.F. 280-284)

The next day, Thursday, September 8, the three boys went to seven different schools seeking to be admitted. (S.F. 240)

Also on Thursday the three boys went to a recording studio to write and record a so-called "protest" song about this matter. (S.F. 92) The song was written about three hours before it was recorded. (S.F. 95)

Petitioners Paul Jarvis, Stephen Webb and Phillip Ferrell wrote the words. (S.F. 160)

The recording was made on Thursday, September 8, between 8:00 P.M. and 2:00 A.M. the next day. (S.F. 95)

The record was played on the air Friday morning, September 9. (S.F. 95)

The record was heard on one Dallas television station and four Dallas radio stations. (S.F. 229)

The record is entitled "Keep your Hands Off It" and the words are: (S.F. 93, Defendants' Exhibits 1, 3)

"Went to school, got kicked out,
Said it was too long, now we're going to shout.

(Chorus)

"Keep your hands off of it,
Keep your hands off of it,
It don't belong to you.

"Bopped upon the steps, Principal I met,
You're not getting in, now what do you want to bet.

(Chorus)

"Went this morning, tried to get in,
The kids were for us, but we still couldn't win.

(Chorus)

"HAIR, THAT IS."

The one boy, Stephen Webb, made an apology of a sort to the school principal for this record. (S.F. 96)

Each of the three boys admits that the school principal referred to in the song could in some way have reference to the principal of Samuell High School, Mr. Lanham. (S.F. 167, 224, 251)

A decision of a principal can be appealed to the assistant superintendent of administration, and if not satisfied, then

to the superintendent of schools, and if not satisfied, to the Board of Education. (S.F. 196-197)

No appeal of the principal's decision was taken by the Petitioners to the assistant superintendent of administration, the school superintendent or the Board of Education. (S.F. 196-197)

The only efforts made by or on behalf of any of the Petitioners to present this matter to higher school authorities were a conversation on September 7, between the three boys and the assistant superintendent of administration held on the steps of the school administration building and a telephone call by the boys' attorney to the superintendent of schools. (S.F. 240, 197, 198, 199)

A second and rather long conference between the three boys and Mr. Lanham was held in Mr. Lanham's office September 13, 1966, about the situation. (S.F. 242)

Rather than present the matter to higher school authorities in any reasonably formal manner, Petitioners filed this action in the District Court on September 21, 1966.

The principal, Mr. Lanham, is in his 9th year as the principal of Samuell High School. He has also been principal of a junior high school and two elementary schools. Except for three years service in World War II he has been a teacher or principal in public schools for 37 years.[1] (S.F. 34)

[1] The Statement of Facts erroneously states 11 years; however, the Court Reporter corrected this by letter to the Clerk of the Court of Appeals dated December 22, 1966.

In Mr. Lanham's opinion in years of dealing with high school students there is a direct correlation between behavior and discipline and dress. (S.F. 67)

This experience in dealing with high school students is the foundation and reason for the requirement that dress not be extreme. (S.F. 67)

In Mr. Lanham's opinion extreme dress really indicates disrespect for authority and those who dress in the extreme are those who have difficulty with school authorities and school regulations. (S.F. 66)

Movies, television, magazines and newspapers are different surroundings from that of school; school is for education; and the student should have a climate where he can get an education without too many distractions. (S.F. 54, 55)

Mr. Lanham feels that long hair, if it is extreme, interferes with the learning process and the educational process within the classroom. (S.F. 55)

Long haired boys are subject to harrassment in school. (S.F. 55)

Some examples of facts and circumstances given by Mr. Lanham upon which his judgments and opinions are based are:

Boys in some Dallas schools have taken the matter of long hair into their own hands and given other boys haircuts. (S.F. 51)

In his school, some boys were going to cut another boy's hair they thought too long; however, teachers and a counselor learned of the proposed haircut and prevented it. (S.F. 52)

In his school, boys who think other boys' hair too long will make it pretty hard on them and use obscene language toward them in school. (S.F. 62)

In his school, girl students have come to the school office complaining of the obscene language used and overheard in the hall directed by some boys toward boys with long hair. (S.F. 62)

In his school, boys on a number of occasions have challenged boys with long hair to fight. (S.F. 62)

In his school, boys have tormented boys with long hair that "the girls' rest-room is right down the hall." (S.F. 63)

In his school, he worked with and tried to help a boy with hair of such style and length that he would not go to the boys' rest-room until the other boys had left the rest-room. (S.F. 64)

In addition to the extremes of long hair on boys there are other extremes of dress or appearance with which Samuell High School has been confronted. (S.F. 64)

Girls have been sent home to change their dress because too much is exposed. (S.F. 65)

Girls have been asked to remove too much make-up, too much paint and false eyelashes so that they would not be conspicuous. (S.F. 65)

Girls are expected to wear dresses and not tight fitting pants. (S.F. 65)

Girls are supposed to wear shoes and not come to school barefooted. (S.F. 65)

Mr. Lanham feels it is the school's responsibility to lead young people in a proper direction, that the matter of dress has a very important effect on their situation at school, and it is his primary concern that the educational process is efficiently carried on with propriety for the good of all the students, and he is trying to have the type of school to give students the best opportunity to develop themselves from high school into adulthood. (S.F. 65, 71)

Even boys with long hair appearing as witnesses admit their hair has been a source of problems at school.

Boys at school have threatened to cut one witness's hair and things have been said to him by other boys at school. (S.F. 123, 124)

Another was involved in a fight at school and has had trouble over his long hair. (S.F. 129, 130)

Petitioners admit that the length and style of their hair is an element of attraction and performance.[2] And a witness possessed of long hair admits and recognizes that the music played by long haired groups is "wild" and that long hair goes with the music. (S.F. 140)

[2] Plaintiffs would further show the Court that their sons have heretofore entered into a business contract by and through the Plaintiffs in this cause for their performance in the entertainment field, and by the standard, customs and usage within the field of entertainment, the hair style of the participants, to-wit, Philip Ferrell, Paul Jarvis and Stephen Webb is a *necessary element of attraction and performance* * * *" (Plaintiffs' Original Complaint) (Emphasis Ours)

Problems with length and style of boys' hair started about three years ago and have been growing both as to numbers of boys and length of hair. (S.F. 293, 287-289)

These boys resist regulations and seek to call attention to themselves. (S.F. 290)

REASONS FOR DENYING THE WRIT

1. *The regulation is not a denial of due process.*

Petitioners contend their personal appearance is a form of expression akin to thought and speech communicated to others through the symbolism of the length and style of their hair. Petitioners insist on the absolute right of such expression subject to no regulation or restriction. Petitioners' personal appearance sought to be labeled "speech" communicates no idea and falls short of being protected thought and speech. *U. S. v. O'Brien*, ... U.S. .... (May 27, 1968). However, even if it could be said that the length and style of hair is a constitutionally protected mode of expression, the right to so communicate is not absolute. *Dennis v. U. S.*, 341 U.S. 494, 508; *Cox v. Louisiana*, 379 U.S. 536, 554; *Breard v. Alexandria*, 341 U.S. 622, 642. Recent stated standards justifying governmental regulation are met. *U.S. v. O'Brien*, supra. Petitioners do not make known the idea to be communicated through their hair.

The Courts of Massachusetts and Virginia have upheld regulations denying attendance to students because of the length and style of their hair. *Leonard v. School Committee of Attleboro*, 212 N.E. 2d 468; *Marshall v. Oliver*, petition

for Writ of Certiorari to the Supreme Court of Appeals of Virginia denied, 385 U.S. 945. (The highest Court of Virginia denied the appeal without published opinion.)

Petitioners are youths approaching adulthood placed with thousands of their contemporaries in a school building for the purpose of learning. Limited regulation of Petitioners' and other young people's rights for the purpose of their education based on opinion as what divides the attention of the student and distracts the student from the singleness of purpose which the State desires to exist in its school does not deny rights protected by the Fourteenth Amendment. *Waugh v. Board of Trustees of University of Mississippi*, 237 U.S. 589, 596-597.

2. *The regulation is not unlawful under the laws and Constitution of the State of Texas.*

Two of the Texas cases relied on by Petitioners involve marriage, the third motherhood. The latest of these cases involving such irreversible circumstances of proper family status distinguishes the District Court's opinion in the instant case. *Carrollton-Farmers Branch Independent School District v. Knight*, 418 S.W. 2d 535, 542.

Texas Courts have not looked solely to the statutes cited by Petitioners in determining the right of local school authorities to manage and govern schools in connection with the control exerised over students. Rather, under Article VII., Section 1, of the Constitution of the State of Texas and Article 2780, Vernon's Annotated Texas Civil Statutes, Texas Courts have permitted school authorities to exercise a

wide range of regulatory or police powers with respect to the activities and conduct of students. School authorities have been permitted to require students to park automobiles in a designated parking lot and not move them until a designated hour. *McLean Independent School District v. Andrews*, 333 S.W. 2d 886, Ct. Civ. App., no writ history; to bar married students from participating in athletics and other school events and from holding class office, *Kissick v. Garland Independent School District*, 330 S.W. 2d 708, Ct. Civ. App., writ refused, no reversible error; to in effect prohibit membership in high school fraternities and sororities, *Wilson v. Abilene Independent School District*, 190 S.W. 2d 406, Ct. Civ. App., writ refused, want of merit; to forbid students from leaving school grounds during recess and noon hour, *Bozeman v. Morrow*, 34 S.W. 2d 654, Ct. Civ. App., no writ history; to prohibit students from taking lunch, except from the school cafeteria, or as brought from home, *Bishop v. Houston Independent School District*, 29 S.W. 2d 312, Commission of Appeals, (opinion adopted by Supreme Court of Texas).

Article VII., Section 1, of the Texas Constitution vests in the legislature power and authority to do whatever is necessary to establish and maintain an "efficient system" of public free schools; and the legislature has the power and authority to delegate to the school authorities such power and authority as may be necessary to accomplish the end intended. *Wilson v. Abilene Independent School District*, supra, 412. Under Texas law the regulation complained of was proper to establish and maintain an "efficient sy[illegible]em"

of education as contemplated by the Constitution of Texas. Texas has adopted the well known loco parentis rule permitting the school principal to exercise such power of control, restraint and correction as may be reasonably necessary to enable teachers to perform their duties and to effect the general purposes of education. *Wilson v. Abilene Independent School District*, supra, 410.

3. *There has been no violation of the Civil Rights Act, 42 U.S.C., Sections 1981 and 1983.*

Petitioners assert a denial of rights under federal statutes providing that all persons shall have certain rights enjoyed by white citizens. Petitioners are white; race is not involved. *Byrd v. Sexton*, 277 F. 2d 418, Certiorari denied, 364 U.S. 818, correctly refused to extend the civil rights statutes to a case involving the right to attend public high school where the matter of race was not involved.

CONCLUSION

The Petition for Writ of Certiori should be denied.

Respectfully submitted,

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Dated: June 28, 1968.

PROOF OF SERVICE

I, Franklin E. Spafford, one of the Attorneys for Respondents herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 26 day of June, 1968, I served a copy of the foregoing Respondents' Brief in Opposition to Petition for Writ of Certiorari upon Marvin Menaker, Esq., Herbert L. Hooks, Esq. and W. D. Masterson, Esq., 1800 First National Bank Building, Dallas, Texas, Attorneys of Record for the Petitioners, by mailing a copy to each at such address by depositing the same in a United States mail box in an envelope properly addressed to each at such address with first class postage prepaid.

FRANKLIN E. SPAFFORD
Attorney for Respondents